

increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it reduces the Exchange's fees in a manner that encourages market participants to direct their customer order flow, to provide liquidity, and to attract additional transaction volume to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, implementing a volume based customer rebate program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX, which is competing for volume with much larger exchanges that dominate the options trading industry. As a new exchange, MIAX has a nominal percentage of the average daily trading volume in options, so it is unlikely that the customer rebate program could cause any competitive harm to the options market or to market participants. Rather, the customer rebate program is a modest attempt by a small options market to attract order volume away from larger competitors by adopting an innovative pricing strategy. The Exchange notes that if the rebate program resulted in a modest percentage increase in the average daily trading volume in options executing on MIAX, while such percentage would represent a large volume increase for MIAX, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the proposal will help further competition, because market participants will have yet another additional option in determining where to execute orders and post liquidity if they factor the benefits of a customer rebate program into the determination.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹³ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MIAX-2013-63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2013-63. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public

Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2013-63 and should be submitted on or before February 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2014-00688 Filed 1-15-14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71285; File No. SR-CBOE-2013-130]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the PULSe Workstation

January 10, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on December 31, 2013, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to expand on the Exchange's past description of the PULSe workstation. There are no proposed changes to the text of the Exchange's rules.

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to expand on the Exchange's past description of the PULSe workstation. By way of background, the PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of CBOE and CBOE Stock Exchange, LLC ("CBSX"), CBOE's stock trading facility. In addition, the PULSe workstation provides a user with the capability to send options orders to other U.S. options exchanges and/or stock orders to other U.S. stock exchanges and trading centers³ ("away-market routing").⁴ To use away-market routing functionality, a CBOE or CBSX Trading Permit Holder must either be a PULSe Routing Intermediary or establish a relationship with a third-party PULSe Routing Intermediary.⁵ A

³ A "trading center," as provided under Rule 600(b)(78) of Regulation NMS, 17 CFR 242.600(b)(78), means a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.

⁴ For a more detailed description of the PULSe workstation and its functionality, see, e.g., Securities Exchange Act Release Nos. 62286 (June 11, 2010), 75 FR 34799 (June 18, 2010) (SR-CBOE-2010-051), 63244 (November 4, 2010), 75 FR 69148 (November 10, 2010) (SR-CBOE-2010-100), 63721 (January 14, 2011), 76 FR 3929 (January 21, 2011) (SR-CBOE-2011-011 [sic]), 65280 (September 7, 2011), 76 FR 56838 (September 14, 2011), 65491 (October 6, 2011), 76 FR 63680 (October 13, 2011) (SR-CBOE-2011-092 [sic]), and 69990 (July 16, 2013), 78 FR 43953 (July 22, 2013) (SR-CBOE-2013-062).

⁵ The Exchange notes that the away-market routing functionality is offered as a convenience to Trading Permit Holders and is not an exclusive means available to a Trading Permit Holder to send orders intermarket. With respect to options (stocks), the Exchange also notes that the away-market routing functionality in the PULSe workstation will

"PULSe Routing Intermediary" is a CBOE or CBSX Trading Permit Holder that has connectivity to, and is a member of, other options and/or stock exchanges and other trading centers. If a Trading Permit Holder sends an order from a PULSe workstation, the PULSe Routing Intermediary will route that order to the designated market on behalf of the entering Trading Permit Holder (if the Trading Permit Holder is not a PULSe Routing Intermediary). Among other things, the PULSe workstation also causes CBOE and/or C2 Options Exchange, Incorporated ("C2"), an affiliate of CBOE and CBSX (if the CBOE/CBSX Trading Permit Holder is also a C2 Trading Permit Holder)⁶ (CBSX) to be the default destination exchange(s) (trading center) for individually executed marketable option (stock) orders if CBOE and/or C2 (CBSX) is at the national best bid or offer ("NBBO"), regardless of size or time, but allows users to manually override CBOE and/or C2 (CBSX) as the default destination exchange(s) (trading center) on an order-by-order basis or on a global basis.⁷ Users may also direct a PULSe Routing Intermediary to use its "smart router" functionality and have the capability to send orders between PULSe workstations. Please refer to the CBOE Fees Schedule for a complete listing of PULSe workstation-related fees.

The PULSe workstation is made available to Trading Permit Holders by Signal Trading Systems, LLC ("STS").⁸ Trading Permit Holders may also make

not displace the provisions of the Options Order Protection and Locked/Crossed Market Plan (Regulation NMS), which will continue to apply in the circumstances described in the Plan (Regulation NMS).

⁶ By way of background, the PULSe workstation offers the ability to route orders to any market, including CBOE/CBSX affiliate C2. To the extent a CBOE/CBSX Trading Permit Holder that is also a C2 Trading Permit Holder obtains a PULSe workstation through CBOE, it is not necessary for that Trading Permit Holder to obtain a separate PULSe workstation through C2 to route orders to C2. It is also not necessary for that Trading Permit Holder to utilize the services of a Routing Intermediary to route orders to C2.

⁷ Nothing about the PULSe order routing functionality would relieve any TPH that is using the PULSe workstation from complying with its best execution obligations. Specifically, just as with any customer order and any other routing functionality, a Trading Permit Holder would have an obligation to consider the availability of price improvement at various markets and whether routing a customer order through the PULSe functionality would allow for access to opportunities for price improvement if readily available. Moreover, a Trading Permit Holder would need to conduct best execution evaluations on a regular basis, at a minimum quarterly, that would include its use of the PULSe workstation.

⁸ STS is an affiliate of CBOE that is jointly owned by CBOE and FlexTrade Systems, Inc. ("FlexTrade"), a technology services provider.

the workstation available to their customers (including sponsored users⁹). STS grants licenses to use the PULSe workstation directly to CBOE and CBSX Trading Permit Holders, as well as their customers. STS also has the ability, if it determines to do so, to permit Trading Permit Holders to make the PULSe workstation available to their customers (including sponsored users) through the use of sublicenses. However, whether the PULSe workstation is made available to Trading Permit Holders' customers through a direct license or sublicense, any order routed to CBOE or CBSX through a PULSe workstation must be routed through a Trading Permit Holder or sponsored user (whose orders are sponsored by the Trading Permit Holder). The Trading Permit Holder will also remain responsible for any applicable PULSe fees.

The Exchange is proposing to allow a Trading Permit Holder that licenses the PULSe workstation and makes workstations available to its customers (including sponsored users) to "co-brand" the workstations used by those customers.¹⁰ If a Trading Permit Holder elects to co-brand its customers' workstations, the Trading Permit Holder will enter into a co-branding agreement with STS (which supplements the Trading Permit Holder's license agreement to use the PULSe workstation), pursuant to which STS will include the Trading Permit Holder's brand (such as name or logo) on the PULSe workstation screens used by the Trading Permit Holder's customers. There are no fees for co-branding.

The Exchange notes that if a Trading Permit Holder elects to co-brand PULSe workstations, the PULSe logo will continue to be on the workstation screen. The PULSe workstation functionality will not change and will

⁹ The PULSe workstation may be made available by a Trading Permit Holder to its customers on a pass-through basis (where orders pass through the Trading Permit Holder's systems prior to reaching the Exchange) or a sponsored access basis. To the extent that a Trading Permit Holder makes the workstation available to a customer on a sponsored access basis, the customer would be considered a "sponsored user," and the Trading Permit Holder-customer relationship would be subject to Rule 6.20A. Please note that in the adopting release for Commission Rule 15c3-5 (risk management controls for brokers or dealers with market access), the Commission indicated that a broker-dealer relying on risk management technology developed by third parties should perform appropriate due diligence to help assure the controls are reasonably designed, effective, and otherwise consistent with Rule 15c3-5. Mere reliance on representations of the third party technology developer—even if an exchange or other regulated entity—is insufficient to meet this due diligence standard.

¹⁰ Trading Permit Holders' use of the co-branding service is voluntary.

continue to work as described in this and previous rule filings. No Trading Permit Holder will obtain any additional rights or interest in the PULSe workstation if it elects to use co-branding; STS will remain the sole owner of PULSe (and related PULSe materials and intellectual property). Any Trading Permit Holder that elects to co-brand will remain subject to the terms and conditions of its license agreement with STS. Additionally, neither STS nor its owners (CBOE and FlexTrade) will obtain any rights in a Trading Permit Holder that co-brands or that Trading Permit Holder's intellectual property, other than STS's right to include the Trading Permit Holder's branding on PULSe workstations. Neither STS nor its owners will be involved in any manner in any account of a Trading Permit Holder (or its customers) that uses the PULSe workstation. The Exchange notes that the inclusion of a Trading Permit Holder's branding on the PULSe workstation is not an endorsement or indication of the value of the Trading Permit Holder or its products or services.¹¹

The Exchange notes that FlexTrade¹² engages and will engage in business activities in addition to its provision of services to STS and that these activities include providing other technology services to broker-dealers.¹³ The

¹¹ The Exchange intends to include similar language on the PULSe workstation.

¹² FlexTrade is the sole member of a single member limited liability company named FlexTrade LLC. FlexTrade LLC is a registered broker-dealer, and FlexTrade and FlexTrade LLC each currently makes a front-end order entry workstation named "FlexTrader" available. FlexTrade LLC is not a member of CBOE or CBSX.

¹³ FlexTrade is not and, currently does not intend to be, registered as a broker-dealer under Section 15(a) of the Act. STS also is not and, currently does not intend to be, registered as a broker-dealer under Section 15(a) of the Act. In this regard, the Exchange reiterates the following statements that it made in the initial PULSe rule filing (*see supra* note 4, Securities Exchange Act Release No. 62286): (a) CBOE is primarily responsible for the marketing of the PULSe workstation. The Exchange notes that any Trading Permit Holder that elects to co-brand must use commercially reasonable efforts to promote PULSe pursuant to the co-branding agreement (although the Trading Permit Holder may offer other products to its customers, and customers may continue to use any other products they choose, for front-end order entry). FlexTrade has no role, and in no event will have any role, in marketing the PULSe workstation. FlexTrade is not, and will continue not to be, party to any agreements with Trading Permit Holders for the PULSe workstation. (b) In contributing services to STS, FlexTrade is limited to providing software and systems technology and maintaining proper technical functioning. CBOE is responsible for ensuring that STS's provision of the PULSe workstation, as a facility of CBOE, meets CBOE's obligations as a self-regulatory organization. (c) Unless it becomes registered as a broker-dealer under Section 15(a) of the Act, neither STS nor

Exchange also notes that STS does not currently but may in the future engage in business activities in addition to making the PULSe workstation available, and that these activities may also include the provision of other technology services to broker-dealers. In this regard, the Exchange reiterates the following statements that it made in the initial PULSe rule filing: (i) There are and will continue to be procedures and internal controls in place that are reasonably designed so that FlexTrade does not unfairly take advantage of confidential information related to PULSe in its other business activities and so that STS does not unfairly take advantage of confidential information related to PULSe to the extent that STS engages in any business activities other than providing the PULSe workstation. (ii) The books, records, premises, officers, directors, agents, and employees of STS, with respect to the PULSe workstation, as a facility of CBOE, are deemed to be those of CBOE for purposes of and subject to oversight pursuant to the Act. (iii) Use of the PULSe workstation is optional. Trading Permit Holders (and their customers) are not required to use the PULSe workstation to initiate their orders, and Trading Permit Holders (and their customers) may use any available order-entry system that they select, including ones that they develop themselves for use to initiate their orders. These statements continue to be accurate with the availability of the new co-branding service, which is also optional.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁵ requirements that the rules of

FlexTrade will hold itself out as a broker-dealer, provide advice related to securities transactions, match orders, make decisions about routing orders, facilitate the clearance and settlement of executed trades, prepare or send transaction confirmations, screen counterparties for creditworthiness, hold funds or securities, open, maintain, administer or close brokerage accounts, or provide assistance in resolving problems, discrepancies or disputes related to brokerage accounts. These statements continue to be accurate with the availability of the new co-branding service. Should STS or FlexTrade seek to register as a broker-dealer in the future, the Exchange represents that the broker-dealer would not perform any operations without first discussing with the Commission staff whether any of the broker-dealer's operations should be subject to an Exchange rule filing required under the Act, 15 U.S.C. 78s(b)(1).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, describing the new "co-branding" service available to PULSe Trading Permit Holder users provides more information to the public about PULSe, which information benefits investors and the public. Permitting PULSe Trading Permit Holder users to have their branding included on PULSe workstations that they make available to their customers (including sponsored users) is reasonable given that, as discussed above, Trading Permit Holders are responsible for their customers' orders entered into PULSe workstations, as well as for any applicable PULSe fees related to workstations used and orders entered into those workstations by their customers. Trading Permit Holder users' election to co-brand those workstations is consistent with those responsibilities and provides those users with more freedom in their uses of the PULSe workstations, which perfects the mechanism of a free and open market and a national market system.

The PULSe functionality remains unchanged. If a Trading Permit Holder elects to use the co-branding service, STS would merely add information (such as a name or logo) to the workstation screen and change nothing else with respect to PULSe. PULSe currently competes with similar products offered by other technology providers as well as other options exchanges. Additionally, firms can continue to create their own proprietary front-end order entry software. Given the robust competition for volume among options exchanges, offering additional services on PULSe that may attract order flow is consistent with the above-mentioned goals of the Act.

The Exchange believes that the proposed rule change does not discriminate between Trading Permit Holders because the use by Trading

¹⁶ *Id.*

Permit Holders of co-branding is completely voluntary and available as a convenience to all Trading Permit Holders that elect to use the PULSe workstation. The Exchange also believes it is reasonable to offer the co-branding service only to Trading Permit Holder PULSe users, because those users make PULSe available to their customers. Such customers do not make the PULSe workstation available to others, and are not responsible for the use of PULSe by other parties, and thus providing the co-branding service to customers of Trading Permit Holders would not be appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange will make the co-branding service described in this rule filing available to all Trading Permit Holders that use PULSe on the same terms and conditions, and use of the co-branding service is completely voluntary. As discussed above, the Exchange believes it is reasonable to not offer the co-branding service to non-Trading Permit Holder customers of PULSe.

Trading Permit Holders (and their customers) will continue to have the flexibility to use any order-entry technology they choose to access the Exchange and may elect not to use the co-branding service if they elect to use PULSe. The PULSe functionality remains unchanged and continues to be made available as described in this and previous rule filings. The Exchange is merely offering Trading Permit Holder that use PULSe the opportunity to add branding to the workstation screens used by their customers (including sponsored users) for which workstations and orders entered through those workstations the Trading Permit Holders are responsible. This service would only add information to the workstation screen and change nothing else with respect to PULSe. The Exchange's offering of the co-branding service is another effort to have PULSe compete with the numerous other order-entry systems available in the marketplace. If Trading Permit Holders believe that other order-entry systems available in the marketplace are more beneficial than PULSe, then Trading Permit Holders may simply use those products instead. Orders sent to the Exchange for execution by Trading Permit Holders that use PULSe, whether they co-brand or not, will receive no preferential treatment.

CBOE believes that the proposed rule change will relieve any burden on, or otherwise promote, competition. CBOE will be offering a service with respect to PULSe that is available or could be made available on similar products throughout the industry. Market participants can also develop their own proprietary products with the same functionality, which they can offer to their customers. Market participants are also able to become Trading Permit Holders and license PULSe, and elect to co-brand PULSe workstations for their customers, if they believe the new co-branding service makes CBOE and PULSe more attractive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f) of Rule 19b-4¹⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2013-130 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2013-130. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2013-130 and should be submitted on or before February 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71276; File No. 4-669]

Self-Regulatory Organizations; Topaz Exchange, LLC (d/b/a ISE Gemini); Order Declaring Effective a Minor Rule Violation Plan for Topaz Exchange, LLC

January 9, 2014.

On November 14, 2013, Topaz Exchange, LLC (d/b/a ISE Gemini) (the "Exchange") filed with the Securities and Exchange Commission

¹⁹ 17 CFR 200.30-3(a)(12).